



# Serious Organised Crime and Police Act 2005

## 2005 CHAPTER 15

### PART 2

#### INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

### CHAPTER 6

#### PROCEEDS OF CRIME

#### 98 Civil recovery: freezing orders

(1) In the Proceeds of Crime Act 2002 (c. 29), after section 245 insert—

*“Property freezing orders (England and Wales and Northern Ireland)*

#### **245A Application for property freezing order**

- (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).
- (2) A property freezing order is an order that—
  - (a) specifies or describes the property to which it applies, and
  - (b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any

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right of the enforcement authority to obtain a recovery order in respect of any property.

- (4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and
  - (b) the enforcement authority has not established the identity of the person who holds it,
 the authority has taken all reasonable steps to do so.

#### **245B Variation and setting aside of order**

- (1) The court may at any time vary or set aside a property freezing order.
- (2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.
- (3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.
- (4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

#### **245C Exclusions**

- (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—
  - (a) power to exclude property from the order, and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

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- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
  - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
  - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  - (c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
  - (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
  - (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.
- (7) If excluded property is not specified in the order it must be described in the order in general terms.
- (8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.
- (9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

#### **245D Restriction on proceedings and remedies**

- (1) While a property freezing order has effect—
  - (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and
  - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

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- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.”

(2) In the Proceeds of Crime Act 2002 (c. 29), after section 255 insert—

*“Prohibitory property orders (Scotland)*

#### **255A Application for prohibitory property order**

- (1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).
- (2) A prohibitory property order is an order that—
  - (a) specifies or describes the property to which it applies, and
  - (b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and
  - (b) the enforcement authority has not established the identity of the person who holds it,
 the authority has taken all reasonable steps to do so.

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### **255B Variation and recall of prohibitory property order**

- (1) The court may at any time vary or recall a prohibitory property order.
- (2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.
- (3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.
- (4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

### **255C Exclusions**

- (1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows—
  - (a) power to exclude property from the order, and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.
- (7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement

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authority to recover the property obtained through unlawful conduct is not unduly prejudiced.

- (8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

#### **255D Restriction on proceedings and remedies**

- (1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

#### **255E Arrestment of property affected by prohibitory property order**

- (1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.
- (2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

#### **255F Inhibition of property affected by prohibitory property order**

- (1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.

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- (2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).
- (3) The warrant for inhibition—
  - (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
  - (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must—
  - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
  - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.”

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**Commencement Information**

- 11** S. 98(1) in force at 1.1.2006 by S.I. 2005/3136, art. 3(a)
- 12** S. 98(2) in force at 1.1.2006 by S.I. 2005/3136, art. 2(a)

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**Commencement Orders yet to be applied to the Serious Organised Crime and Police Act 2005**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2006/2182 art. 3](#) amendment to earlier commencing SI 2006/1871